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Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his mission to Tunisia*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, on his visit to Tunisia between 20 and 28 February 2017.

The main objective of the mission was to assess how the financial crisis, public debt and the current economic reform programme were affecting the enjoyment of human rights in the country. In addition, the Independent Expert analysed the impact of illicit financial flows on the enjoyment of human rights in Tunisia — including efforts by the Government to address tax evasion, corruption and the investigation of economic crimes in the context of transitional justice, and challenges faced in recovering stolen assets hidden or frozen in foreign jurisdictions.

* The present report was submitted after the deadline in order to reflect most recent developments.

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** Circulated in the language of submission and Arabic only

I. Introduction

1. The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, conducted an official visit to Tunisia between 20 and 28 February 2017. The mandate of the Independent Expert is wide and complex, and is clearly framed within the scope and content of international human rights law and standards. In its most recent resolution extending the mandate,[1] the Human Rights Council requested the Independent Expert to, inter alia, pay particular attention to illicit financial flows, and the effects of foreign debt and the policies adopted to address them, on the full enjoyment of all human rights.

2. The visit was aimed at studying the impact of the country's financial difficulties on the enjoyment of human rights, in particular economic, social and cultural rights. Of special interest was the question of whether the economic reform and fiscal consolidation policies planned or under implementation in the country would contribute to consolidating democracy and human rights in the country, or may have the potential to undermine the progress achieved.

3. Another objective of the visit was to analyse and assess the impact of illicit financial flows on the enjoyment of human rights. The Independent Expert studied the challenges that the Government of Tunisia was encountering in the recovery of stolen assets from foreign jurisdictions, and its efforts to prevent illicit financial outflows, tax evasion and corruption. This included efforts to ensure accountability for financial complicity, past economic crimes, and the misappropriation of public funds in the context of transitional justice.

4. The Independent Expert thanks the Government of Tunisia for its full cooperation during and after the visit. He is grateful to all those who took the time to meet with him and for the support provided by the Office of the United Nations High Commissioner for Human Rights, both in Geneva and in Tunis, in organizing his programme.

5. The transition to democracy after 2011 resulted in the adoption of the country's new Constitution in 2014, and contributed to improvements in the protection and realization of human rights. However, progress achieved in the field of civil and political rights could be seriously undermined if the democratic transition is not accompanied by equal progress in the field of economic, social and cultural rights and by improvements in the everyday life of the population. Tunisia is facing significant economic and social challenges: lack of opportunities for young people, high unemployment, persistent regional disparities, lack of foreign investment, and an unstable social and political environment. Addressing these challenges will not only improve living conditions within the country, but will also be crucial to prevent violent extremism and terrorism.

6. The past of Tunisia was tainted by cronyism, corruption and the misappropriation of public funds, under the regime of Zine el-Abidine Ben Ali, the former president. In order to restore trust in public institutions and democracy in Tunisia, a clear and absolute break with the past is necessary. Ongoing efforts to enhance transparency and accountability in the public sector are therefore essential. Access to jobs, public education, health care, public benefits and services needs to be equal for all. In turn, efforts by the Government of Tunisia to improve the transparency of public finances, reduce tax evasion, prevent illicit outflows and ensure the return of stolen assets are essential in order to stabilize the public finances of Tunisia and ensure their efficient use for the provision of public services.

[1] Resolution 34/3

II. Human rights and economic reform policies

A. Relevant international human rights standards

7. Tunisia is party to most international treaties protecting human rights, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention for the Protection of All Persons from Enforced Disappearance. It has also ratified the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

8. Central to the realization of human rights is the obligation of States parties to ensure non-discrimination and to take appropriate measures, making use of the maximum of its available resources, to ensure the progressive realization of economic, social and cultural rights. Appropriateness of measures refers — as pointed out by the Committee on Economic, Social and Cultural Rights — not only to legislative measures, but also to administrative and financial measures, and the provision of effective remedies for human rights violations.[2]

9. Borrowing States and lending institutions have obligations under international human rights law when implementing economic reform and structural adjustment programmes.[3] Austerity measures that would reduce the enjoyment of economic, social and cultural rights are only justifiable under international law if they are unavoidable, necessary and proportionate, in the sense that the adoption of any other policy or failure to act would be more detrimental to these rights. They should remain in place only insofar as they do not result in discrimination; they must mitigate inequalities and ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected. Most importantly, they should never undermine the minimum core content of the rights protected under the International Covenant on Economic, Social and Cultural Rights.[4] In addition, States bear the burden of ensuring that austerity measures are introduced only after the most careful consideration of all other less restrictive alternatives.[5]

10. The guiding principles on foreign debt and human rights (see A/HRC/20/23) underscore that States should ensure that rights and obligations arising from external debt agreements or arrangements do not hinder the progressive realization of economic, social and cultural rights. A more detailed elaboration of human rights principles applicable in the assessment of economic reform programmes is contained in the thematic report of the Independent Expert (A/HRC/37/54).

B. National human rights framework

11. The Constitution of Tunisia of 2014[6] constituted a milestone for the region. It enumerates the majority of rights contained in the international covenants mentioned above. It guarantees, inter alia, the right to form and join unions (art. 36), the right to health, including the State obligation to ensure free health care for those without means and those with limited income, and the right to social assistance (art. 38), the right to free public

[2] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations.

[3] See A/HRC/37/54, paras. 25–34, and the guiding principles on foreign debt and human rights, A/HRC/20/23, annex.

[4] See the statement of the Committee on Economic, Social and Cultural Rights on public debt, E/C.12/2016/1.

[5] See E/2013/82, para. 18.

[6] Adopted on 26 January 2014 by the Constitutional Assembly. The official text in Arabic is available at www.arp.tn/site/main/AR/docs/constition.pdf.

education at all levels (art. 39), the right to work, and to decent working conditions and a fair wage (art. 40) and equality between men and women (art. 46).

12. Article 20 of the Constitution provides that international conventions ratified by Tunisia, such as the instruments mentioned above, have a status superior to that of national laws and inferior to that of the Constitution. Limitations to the rights and freedoms guaranteed by the Constitution can be imposed by law only if such law does not compromise their essence (art. 49).

13. The Constitution requires the State to seek social justice, sustainable development and balance of regions, based on development indicators and the principle of positive discrimination (art. 12). It underscores the duty to pay taxes and to contribute towards public expenditure through a fair and equitable system. Thus, both the Constitution and international human rights treaties ratified by Tunisia provide, at least on paper, a robust framework against which taxation, social and economic reform policies could and should be evaluated.

14. The Constitution includes several provisions aimed at combating corruption, ensuring financial transparency and curbing illicit financial flows. It underlines that the State must ensure the proper use of public funds and take measures to spend them according to the priorities of the national economy (art. 10). It obliges the State to prevent corruption and everything that may threaten national resources and sovereignty, and requires that the public administration operate "in accordance with the principles of impartiality, equality and the continuity of public services, and in conformity with the rules of transparency, integrity, efficiency and accountability" (art. 15). All senior government officials, including Members of Parliament, must declare their assets according to the provisions of the law (art. 11).

15. It is stated in article 49 of the Constitution that "judicial authorities ensure that rights and freedoms are protected from all violations". However, the Committee on Economic, Social and Cultural Rights, in its recent review of the country's compliance with the International Covenant on Economic, Social and Cultural Rights, has pointed out that references to rights guaranteed by that Covenant are still relatively rare in judicial decisions.[7] The Constitution provides for the establishment of a Constitutional Court mandated to assess the constitutionality and human rights compliance of legislation, and the establishment of several independent constitutional institutions, including a Human Rights Commission,[8] a Good Governance and Anti-Corruption Commission[9] and a Commission for Sustainable Development and the Rights of Future Generations.[10]

16. The legal regulations governing these bodies should ensure that they are truly independent. For this purpose, they should receive adequate financial and human resources and, if necessary, training for their staff. It is critical that the Human Rights Commission, the Constitutional Court and more broadly the judiciary be in a position to protect all human rights effectively, particularly economic, social and cultural rights, and have both the means and the expertise needed for this endeavour.

17. The Independent Expert calls upon the Government to ensure that the Human Rights Commission meets all requirements under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). He underlines the importance of establishing independent, effective and accessible non-judicial and judicial complaints mechanisms at the national level that ensure that individuals whose rights may have been violated can seek appropriate relief.

[7] See E/C.12/TUN/CO/3, paras. 7–8.
[8] See art. 128.
[9] See art. 130.
[10] See art. 129.

III. Financial, economic and political challenges

18. Tunisia experienced significant economic growth during the rule of Zine el-Abidine Ben Ali, from 1987 to 2011, and was seen as a "success model" for economic reform policies of international financial institutions. However, the revolution of 2011 made it obvious that socially inclusive growth was not a pillar of this economic model. The assumption was that economic growth alone would improve living standards, but the reality was that many people were excluded, especially those living away from the country's coastal regions. For the Independent Expert, it is essential to avoid repeating past mistakes in current efforts to attract investment, promote economic growth and stabilize the public finances of Tunisia.

19. Officially, the International Monetary Fund (IMF) and the World Bank are committed to promoting social inclusive growth. However, it can be questioned whether conditionalities and benchmarks included in the current economic reform programme reflect a clear departure from past policies. In the view of the Independent Expert, adjustment measures should be based on a vision of long-term social, political and financial stability and be grounded on human rights. Reform policies should incorporate the 2030 Agenda for Sustainable Development and follow a human rights-based approach to development.

20. Tunisia is facing challenging times. A difficult global economic environment, coupled with a crisis in the tourism sector following terrorist attacks in 2015, have resulted in sluggish economic growth and have decreased tax revenues in recent years. Real economic growth averaged 4.5 per cent in the five years before the 2011 revolution, but has averaged barely 1 per cent in the six years since. Regional disparities in economic development and in access to work, quality health care and education have remained strong.

21. Unemployment is of particular concern, including discriminatory patterns against women for accessing jobs on the employment market. During the first quarter of 2017, the overall unemployment rate stood at 15.3 per cent, however female unemployment (22.7 per cent) was much higher than male unemployment (12.5 per cent). Higher education graduates have particular difficulty in finding a paid job: according to official statistics, 41 per cent of all female graduates and 19.2 per cent of all male graduates are unemployed.[11] Priority should be given to creating jobs for women, youth and persons with disabilities, particularly in the most disadvantaged regions.

22. The budget deficit, which was below 3 per cent between 2000 and 2010, increased to 6.1 per cent in 2016 and will reach 5.9 per cent in 2017, according to IMF projections — substantially higher than earlier forecasts.[12] The external debt of Tunisia has risen sharply since 2011 and is expected to reach D 62 billion in 2017. The ratio of external debt to gross domestic product (GDP) increased from 51 per cent to 70 per cent by the end of 2016, and may, according to the latest IMF debt sustainability analysis, peak at 81 per cent in 2018. The debt level has surpassed the 70 per cent benchmark widely considered by international financial institutions as a reasonable and manageable limit for emerging market economies. A reduction of the debt ratio to 72.3 per cent by 2022 would require constant GDP growth rates of 3 to 4 per cent for the next five years, a rather optimistic scenario. A serious economic shock, such as a 30 per cent devaluation of the Tunisian dinar, could push the external debt-to-GDP ratio to about 113 per cent.[13] Given that the dinar depreciated by 18 per cent in nominal effective terms between May 2016 and April 2017, such risks obviously exist. The devaluation of the Tunisian dinar, to increase the competitiveness of the Tunisian economy, was supported by IMF. However, instead of reducing the trade deficit, the devaluation further increased the foreign debt of Tunisia.

[11] Data from the National Institute of Statistics, available at www.ins.tn/en/themes/emploi#horizontalTab1

[12] Ministry of Finance, *Indicateurs des finances publiques*, available from www.finances.gov.tn; and International Monetary Fund country report No. 17/203, p. 9.

[13] International Monetary Fund country report No. 17/203, pp. 43–45.

23. The annual cost of public debt service has nearly doubled from about D 3.6 billion in 2010 to D 7 billion in 2017, and is expected to reach a record high of 22 per cent of all public expenditure in 2018.[14] Debt service outstrips the combined annual budgets of the Ministry of Social Affairs (D 1.427 billion) and the Ministry of Public Health (D 1.742 billion).[15]

24. The Independent Expert is concerned that the public debt may become economically and socially unsustainable. The increased volume of debt service reduces significantly the fiscal space of the country to strengthen public services protecting core human rights. He therefore encourages the country's international lenders to consider providing additional debt relief in order to reduce public debt service and free resources for investment according to a broadly discussed national development strategy.

IV. The current economic reform programme

25. In order to overcome economic and financial difficulties, the Government of Tunisia entered on 7 June 2013 into a US$1.7 billion Stand-By Arrangement with IMF.[16] Although this programme helped to preserve macroeconomic stability, the economic situation of Tunisia remained fragile due to a prolonged political transition and the tourism industry facing a devastating setback after the 2015 terror attacks. A second programme, for over $2.9 billion, was approved by the IMF Executive Board on 20 May 2016, to be disbursed over a period of four years. The loans will be made available subject to implementation of conditions agreed between the Government and IMF.[17]

26. The current programme contains several measures that are likely to have negative impacts on the enjoyment of human rights. At the core of the programme is reduction of the fiscal deficit to 2.5 per cent of GDP in 2019 to be achieved through tax reforms and a reduction of the public wage bill.

A. Public sector and labour reform

27. The economic reform programme provides for a restructuring of the civil service to reduce the very high wage bill to 12.7 per cent of GDP through salary and hiring freezes in the civil service, the redeployment of civil service personnel from the capital to disadvantaged regions, reductions in overall staffing numbers and a voluntary separation programme.[18]

28. The Independent Expert is concerned that such measures can impede access by young jobseekers to the civil service. Shrinking the public sector may increase unemployment and further entrench discriminatory patterns in the Tunisian labour market, as a reduction of jobs in the public sector will disproportionally affect women working in public administration, education and health services. Overall, this reduction of jobs will also affect the right to work and related human rights, including the rights to an adequate standard of living, to education, to social security and to health.

29. Efforts to reduce the costs of the public sector should not prevent the addressing of staff shortages in health clinics and hospitals, especially in rural areas, in tax administration and labour inspection, or for prosecuting corruption and economic crimes. Priority should be given to realigning financial and human resources within the civil service, instead of freezing recruitment across the board or laying people off.

30. The Independent Expert would also like to express his caution about potential labour market reforms. As underlined in a recent report, there is no empirical evidence that

[14] Observatoire Tunisien de l'Economie, "Public debt: will Tunisia overcome the 'Wall of Debt'?" (2017).
[15] Webdo, "Tunisie: le budget de l'Etat 2017 en details", 20 December 2016.
[16] See www.imf.org/en/News/Articles/2015/09/14/01/49/pr13202.
[17] International Monetary Fund country report No. 16/138, June 2016.
[18] Ibid.

austerity-related labour market reforms, such as facilitating the lay-off of workers or freezing or reducing wages, have resulted in increased economic growth, employment, or a better situation for workers.[19]

B. Taxation reform

31. According to the IMF-supported economic reform programme, rates of value added tax (VAT) should be harmonized and a more progressive personal income tax introduced, with lower rates for low-income people, and revised allowances and deductions. The Independent Expert welcomes the fact that the tax reform of 2017 ensured that a larger number of persons on a very low income (now, all persons earning below D 5,000) are no longer subject to income tax. However he notes with concern that tax rates for persons on low and medium incomes, of between D 5,000 and D 20,000, have been increased, while rates for persons earning more than D 50,000 have remained at 35 per cent. In other words, tax relief provided to the poor has been financed by higher income tax rates for low- and middle-income groups, but has not resulted in higher taxation of the most affluent income groups.

32. A recent study has shown that the constitutional principle of fair and equitable taxation stands partly in contrast to the way in which the tax burden is currently shared.[20] Seventy-one per cent of all income tax receipts are generated by direct tax deductions paid by employees in the formal sector. The study estimates that about 30 per cent of all economic activity takes place in the informal sector, and is thus not subjected to taxation at all. In addition, 52 per cent of all self-employed persons who have to pay tax for industrial and commercial activities have failed to declare any tax. Tax compliance in the liberal professions (such as lawyers, architects, accountants, engineers and doctors) is also weak, with 27 per cent failing to submit a tax declaration and only 54 per cent of all registered self-employed professionals actually paying any tax (the remaining are running deficits or fall below the threshold for being subjected to tax).[21]

33. While tax revenues from workers in the formal sector have sharply increased since 2011, there was a significant drop of tax revenues from business and oil-exporting companies after 2014.[22] Corporate tax contributes only about 11 per cent of all tax revenues.[23] Less than one quarter of the 136,000 registered companies paid corporate tax in 2015, and 43 per cent of all registered companies (63,000) failed to submit a tax declaration.[24] Concerns have also been brought to the attention of the Independent Expert that the State's capacity for tax inspection is underdeveloped and that regularly provided tax amnesties have rather encouraged tax evasion.[25]

34. Due to market liberalization and trade agreements, customs duties generate only about 8 per cent of all indirect tax revenues (down from about 28 per cent during the 1985–1995 period). The consequence is that the State increasingly relies on income from VAT (about 48 per cent of all indirect tax revenues, up from about 35 per cent)[26] — a tax that disproportionately affects the budget of low-income groups. The 2018 Finance Law

[19] See A/HRC/34/57.

[20] Association Tunisienne des Economistes, "Ancrage de la justice fiscale et mobilisation des ressources propres", October 2017, available from www.asectu.org/10-actualites-activites/354-conference-debat-ancrage-de-la-justice-fiscale-et-mobilisation-des-ressources-propres.

[21] Ibid., pp. 7 and 35–43.

[22] Observatoire Tunisien de l'Economie, "Fiscalité : une chute historique de la contribution des sociétés", Datanalysis No. 10, 2017.

[23] Association Tunisienne des Economistes, "Ancrage de la justice fiscale et mobilisation des ressources propres", p. 22.

[24] Ibid., p. 43.

[25] See, for example, Mounir Hassine, "Rapport sur les droits économiques et sociaux 2017", Forum Tunisien Droits Economiques Sociaux, A propos des droits économiques, sociaux et culturels sept ans apres la révolution.

[26] Ibid.

increased VAT rates by a further 1 per cent, adding an additional burden on low and middle-income households.

35. A recent study measuring the impact of fiscal policy on poverty in Tunisia concluded that the combined effects of taxation, social transfers and subsidies only reduced the poverty of those living in the very lowest-income group (i.e. below the World Bank's $1.25 and $2.50 a day poverty thresholds). However if one uses Tunisia's more appropriate national poverty line tax policies, social transfers and subsidies in fact increase the rate of poverty, from 12.3 per cent to 13 per cent. The study found that the moderately poor were net payers into the system of taxation and social transfers.[27]

36. The Independent Expert wishes to underline that the principle of social justice should be the pillar of the tax reform in the country. This should include a more progressive personal income tax, with lower rates for low-income people, and a more efficient and fairer tax administration that would ensure that large taxpayers fully meet their tax obligations. There is, furthermore, a crucial need for a cumulative impact assessment of how the planned taxation and social security reforms will affect the economic and social rights of people living in Tunisia, which will also look at income distribution and poverty.[28]

C. Social security reform

37. While the Constitution guarantees the right to social assistance, many Tunisians are inadequately covered by the existing social security system, in particular those living in the poorer interior regions or working in the informal sector. Tunisia has two large contribution-based social security funds — the Caisse nationale de retraite et de prévoyance sociale, covering the public sector, and the Caisse nationale de sécurité sociale, covering the private sector. The effective coverage has reached 85 per cent of all people working in the public and private sectors. However, most people working in the informal sector (estimated at about 37 per cent of the total workforce) are not covered by any social insurance. In addition, both funds run significant deficits.

38. According to the economic reform programme agreed with IMF, the social security system is to be reformed by a better "targeted social safety net", with a unique social security identification number for each beneficiary, to be expanded to all persons registered with the social security system. In the view of the Independent Expert, better targeting should not mean redirecting benefits exclusively to the ultra-poor while at the same time inadequately covering large segments of the population living in poverty. The reform programme also includes a comprehensive reform of the pension system, including a review of the system of contributions and pension benefits in order to reduce the deficits of the national retirement and social security funds.

39. The Independent Expert would like to commend the Government of Tunisia for having increased the number of households receiving tax-funded social assistance — from 135,000 in 2010 to 250,000 in 2016.[29] The National Programme of Assistance for Needy Families is the main cash transfer programme providing support to poor families. The subsidy amount was revised upwards in 2016, to D 150 per month per household, to make up for the reduced purchasing power of the Tunisian dinar.

40. The Government has acknowledged that the National Programme of Assistance for Needy Families has not closed regional gaps in poverty.[30] While benefits contribute to about 20 per cent to the income of recipients from poor households, they are often insufficient to move households out of poverty. Despite efforts to increase coverage, the programme has not yet developed into a system of universal social protection for vulnerable population groups. According to a recent World Bank study, the programme covers only

[27] Nizar Jouini and others, "Fiscal incidence and poverty reduction: evidence from Tunisia", Tulane University, Commitment to Equality (CEQ) working paper, June 2017 update, pp. 6 and 19.

[28] See A/HRC/37/54.

[29] See E/C.12/TUN/Q/3/Add.1, para. 58.

[30] Ibid.

about 12.6 per cent of the poorest 20 per cent of the Tunisian population.[31] There is also an unequal distribution of beneficiaries in the different regions that does not correspond to the actual distribution of poverty within Tunisia, a lack of transparency and a lack of a coherent application of eligibility criteria throughout Tunisia. In addition, people who feel that their applications for social assistance have been turned down unjustifiably have no independent complaints mechanism at their disposal that could review decisions in an effective and inexpensive manner.

41. Furthermore, there is a need to ensure the financial sustainability of the pension and social security funds and to close gaps in the country's social security net,[32] including by establishing a social insurance system for unemployment. A national strategy for combating poverty, based on disaggregated data, should also be developed.

42. Pension and social security benefits should be adequate and sufficient to eliminate extreme poverty and should reduce poverty and inequality. Particular attention should also be given to improving the labour and social protection of rural women in Tunisia[33] and social assistance should be accessible to all who meet the eligibility criteria. The reform of the social protection system should follow a human rights-based approach and continue to be guided by the International Labour Organization (ILO) Social Protection Floors Recommendation, 2012 (No. 202). In that regard, the Independent Expert welcomes the signature by the Government of Tunisia of a memorandum of agreement for the implementation of the Decent Work Country Programme for 2017–2022 with ILO and trade unions.

D. Energy and food subsidies

43. The economic reform programme includes a reduction and reform of energy subsidies, including electricity subsidies, and an increase in rates for users. According to IMF, a lifeline tariff should be offered to protect the most disadvantaged segments of society.

44. The World Bank has pointed out that during 2013–2014 Tunisia spent nearly 6.9 per cent of its GDP on various subventions for energy, transportation and basic commodities, while the overall expenditure for social assistance schemes accounted for only 0.4 per cent of GDP.[34] The Independent Expert shares the view that the State could achieve better social protection by reducing energy subsidies for non-poor households and reinvesting those funds in a universal social protection system covering all individuals in need. However, without any mitigation measures, an increase in electricity prices and the removal of other fuel subsidies would likely increase poverty by 2.5 per cent. It is essential to ensure that any subsidy reform ensures the affordability of energy and food for the poor and that it is coupled with the expansion of social assistance to ensure universal coverage.[35]

45. The Independent Expert is concerned about the increase in the cost of living in Tunisia, affecting in particular persons on a low income. According to latest available statistics, during 2017, costs for food and non-alcoholic beverages increased by 8.3 per

[31] See World Bank, "Consolidating social protection and labor policy in Tunisia", p. 37, fig. 27.

[32] Office of the United Nations High Commissioner for Human Rights (OHCHR), "L'approche basée sur les droits de l'homme du système de sécurité sociale tunisien", December 2013, available from https://issuu.com/dorraloudhaief/docs/rapport.

[33] OHCHR, UN-Women and the Tunisian Ministry for Women, Family and Childhood, "Travail des femmes en milieu rural et leur accès à la protection sociale" (2016).

[34] World Bank, "Consolidating social protection and labour policy in Tunisia: building systems, connecting to jobs", Washington D.C., December 2015, p. 31.

[35] See also Economic and Social Commission for Western Asia (ESCWA), "Social protection country profile: Tunisia", 16 November 2016, E/ESCWA/SDD/2016/CP.1, p. 15.

cent, clothing and shoes by 6.7 per cent, housing, water, electricity and gas by 4.2 per cent, and transportation by 5.9 per cent.[36]

E. Reform of the health system

46. Article 38 of the Constitution guarantees the right to health, and specifies that "the State shall guarantee preventative health care and treatment for every citizen and provide the means necessary to ensure the safety and quality of health services" and obliges the State to "ensure free health care for those without means and those with limited income". The Independent Expert commends these provisions aimed at ensuring accessibility, affordability and quality of the right to health. Obviously, it is more challenging to guarantee the right to health for everybody in practice, in particular under current fiscal constraints.

47. After independence, Tunisia made strong efforts to build a public health system. For decades, health and education were high on the political agenda and accounted for about one third of all public expenditure. Public health facilities were built all over the country, following a primary care delivery model. Overall improvements to the Tunisian health system resulted in a significant increase in life expectancy (75.1 years in 2015), and a reduction in the mortality rate of children under 5 from 233 per 1,000 live births in 1965 to 14 in 2015.[37] However, strong regional imbalances have remained. For example, the maternity mortality ratio is over three times higher in rural areas such as Kasserine than in urban areas such as Sousse.[38]

48. Under the structural adjustment programmes implemented during the mid-1980s, user charges were introduced, except for preventive and promotional services. Public spending on health decreased between 1995 and 2011 from 2.7 per cent to 2.3 per cent of GDP, while private health spending rose rapidly at an average annual growth rate of 19 per cent due to increasing costs of medicines and the growing use of private facilities.[39] The share of out-of-pocket payments in total health-care expenditure increased from 36 per cent in the 1970s to nearly 42 per cent in 2013.[40] As public facilities have become gradually underfunded, patients, including insured patients, have increasingly sought health care in the private sector.

49. While public health services are formally free for persons without means, in reality the poor spend a significant percentage of their limited income on health-care services. According to a World Bank study, the poorest 20 per cent of the population spend around 7 per cent of their available income on out-of-pocket health expenditures.[41]

50. After 2011, some efforts were made to allocate more resources to the public health system, however recent austerity measures may undermine these efforts.[42] For example, in 2017 the budget for the Ministry of Health was slightly reduced, from D 1,752 billion to D 1,742 billion, against an overall national budget increase of 10.7 per cent. While in nominal

[36] National Institute of Statistics, Indice de prix à la consommation, December 2017, available at www.ins.tn/sites/default/files/publication pdf/Communiqu%C3%A9%20de%2 0presse_IPC_base_Decembre%202017def%20_1_.pdf.

[37] World Health Organization (WHO), Tunisia statistical profile, available at www.who.int/gho/countries/tun.pdf?ua=1, and www.childmortality.org/index.php?r=site/graph&ID=TUN_Tunisia.

[38] Chokri Arfa and Heba Elgazzar, "Consolidation and transparency: transforming Tunisia's health care for the poor", World Bank, Washington D.C., January 2013, p. 5.

[39] Ibid.

[40] Global Health Watch, "The right to health in Tunisia", and WHO, Global health expenditure database.

[41] Arfa and Elgazzar, "Consolidation and transparency", p. 12.

[42] WHO, Global health expenditure database, available at http://apps.who.int/nha/database/Key_Indicators_by_Country/Index/en.

terms the cuts for this ministry are limited, when adjusted for inflation they represent a significant reduction of the public health-care budget, of about 6 per cent.[43]

51. There has been a boom in private health facilities in coastal regions, attracting qualified medical staff, but public health centres, particularly in the interior, have deteriorated and lack sufficient medical staff, specialists and medicines. Disparities in services are obvious.[44] About 80 per cent of Tunisians rely on the public health-care system, but it employs only half of all doctors. In contrast, the private health sector has 72 per cent of all advanced diagnostic equipment, but serves only 20 per cent of the population.[45] Tunis has an average of 3.5 medical doctors per 1,000 inhabitants, whereas the populations of Jendouba, Kairouan and Tatouine are served by 0.6 medical doctors per 1,000 inhabitants.[46] Privatizations in the health sector have led to a two-tier system of service provision: one for the rich, who can afford to pay for quality private services, and one for the poor, who are served by a failing public sector.[47] The Independent Expert is especially concerned that costs for ambulatory health services increased by 7.4 per cent during 2017, accentuating problems of affordability of the right to health, particularly for persons on a low income.[48]

52. The Independent Expert welcomes the fact that the Tunisian health system aspires to provide universal coverage. Public health insurance is provided through the public health fund (CNAM) financed by the two large social security schemes for the private and public sectors. In 2013, CNAM covered close to 7 million Tunisians, including dependants, which is equivalent to 63 per cent of the population.

53. The population outside the social insurance system is covered through two Assistance médicale gratuite programmes: one programme providing free care at public health institutions for members of households who are enrolled in the National Programme of Assistance for Needy Families, covering the most disadvantaged, and another programme providing public health care at reduced costs for households close to the national poverty line. In 2015, 250,000 households (about 7.5 per cent of all households) were enrolled in the free health-care scheme, while a further 602,000 households (or about 20 per cent of all households) received subsidized health care at public institutions.[49] CNAM and the two Assistance médicale gratuite programmes reportedly achieve a health-care coverage of about 94 per cent.[50] Recent data from the 2015 national household survey indicates, nevertheless, that about 18.7 per cent of individuals living below the national poverty line are excluded from public health coverage.[51]

54. In recent years the expenditures of CNAM have significantly increased, as the number of recipients with chronic diseases covered by the fund nearly doubled between 2010 and 2016. In addition, arrears of D 1.7 billion from the two pension funds that finance the public health fund jeopardize the provision of basic public health services. According to IMF, the fund may soon not be in a position to cover payments to the central pharmacy or health-care providers.[52]

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[43] Webdo, "Tunisie: le budget de l'Etat 2017 en détails", available at www.webdo.tn/2016/12/20/budget-de-letat-2017-details/.

[44] Dialogue sociétal sur les politiques, les stratégies et les plans nationaux de santé "Santé en Tunisie, état des lieux 2014".

[45] Comité technique du dialogue sociétal, "Pour une meilleure santé en Tunisie : faisons le chemin ensemble" (2014), Propositions soumises à la conférence nationale de la santé, p. 19.

[46] National Institute of Statistics, "Tunisie en chiffres 2016", p. 18.

[47] Global Health Watch, "The right to health in Tunisia", p. 131.

[48] National Institute of Statistics, Indice de prix à la consommation, December 2017, p. 4.

[49] Association tunisienne de défense du droit à la santé, Rapport sur le droit à la santé en Tunisie, annex (October 2016).

[50] ESCWA, "Social protection country profile: Tunisia", E/ESCWA/SDD/2016/CP.1, p. 16.

[51] National Institute of Statistics, "Flash: Consommation et niveau de vie", No. 1, December 2016, available at www.ins.tn/sites/default/files/publication/pdf/Bulletin%20-cons-2016-fr2-2.pdf.

[52] International Monetary Fund country report No. 17/203, pp. 9 and 60, and "Assurance maladie: le déficit de la CNAM s'aggrave", *Kapitalis*, 25 April 2017.

55. There are many reasons why the constitutional right to free health care is partly not fulfilled by the State. Individuals may not hold the public card for free or subsidized public health care, although they would be entitled to it. Medication provided free of charge at public health centres has run out of stock and has to be purchased privately in commercial pharmacies. Co-payments, in particular for chronically ill persons enrolled in the subsidized scheme, add to the health cost burden. Finally, corruption affecting the Tunisian health system frequently requires users to make irregular payments to ensure the delivery of services.

F. Recent developments

56. At the time of finalizing the present report, in early 2018, austerity measures implemented to reduce the budget deficit had triggered widespread protests that had turned violent. One person protesting reportedly died on 8 January 2018, more than 40 police officers were injured, and over 500 persons were reportedly arrested.[51] The protests were fuelled by rapid inflation, which hit 6.4 per cent in December 2017, and by measures in the 2018 Finance Law designed to cut the budget deficit from 6 per cent in 2017 to 4.9 per cent in 2018, including a 1 per cent social contribution tax on incomes and corporate profits, a 1 per cent increase in VAT and higher taxes on cars, alcohol, telecommunications and insurance. The immediate trigger for the protests appeared to be a 3–4 per cent increase, on 1 January 2018, in the prices of petrol, diesel and gas (widely used for domestic cooking and heating) — the second increase in six months.[52]

V. Addressing corruption and illicit financial flows

57. Corruption and nepotism were endemic during the rule of Zine el-Abidine Ben Ali, the former president. The former first lady, Leila Trabelsi, and her 10 siblings held controlling interests in numerous businesses, including airlines, Internet and communications providers, radio and television stations, car dealers and large retailers. A World Bank study on State capture in Tunisia identified 662 firms owned by the inner circle of the previous regime. These companies represented only 0.2 per cent of all Tunisian private companies, but were the most lucrative, accounting for 16 per cent of all private sector profits, facilitated also by State-sanctioned monopolies or exclusive rights shielding them from competition.[53] The economic loss from corruption, bribery, kickbacks and trade mispricing that Tunisia experienced between 2000 and 2008 has been estimated at 2 per cent of its GDP every year.[54]

58. Unfortunately, since the 2011 revolution, the problem has not disappeared. Corruption continues to be a destabilizing force in Tunisia, infecting its economy and undermining the enjoyment of human rights in the country.[55] According to a survey conducted in 2016, 64 per cent of all respondents claimed that corruption had increased over the last 12 months, despite many efforts by the Government to tackle it.[56] In a

[51] "Tunisia protests: authorities accused of indiscriminative crackdown", *The Guardian*, 11 January 2018, available at www.theguardian.com/world/2018/jan/11/tunisia-hundreds-arrested-violent-protests-army-deployed-cities.

[52] "Anti-austerity protests erupt", *Economist Intelligence Unit*, 10 January 2018.

[53] See, for example, Bob Rijkers, Caroline Freund and Antonio Nucifora, "All in the family: State capture in Tunisia," World Bank policy research working paper 6810, March 2014.

[54] Antonio Nucifora and Bob Rijkers, "The unfinished revolution: bringing opportunity, good jobs and greater wealth to all Tunisians", World Bank, May 2014, p. 111.

[55] Sarah Yerkes and Marwan Muasher, "Tunisia's corruption contagion: a transition at risk", Carnegie Endowment for International Peace, October 2017, and "Blocked transition: corruption and regionalism in Tunisia," International Crisis Group, 10 May 2017, available from www.crisisgroup.org/middle-east-north-africa/north-africa/tunisia/177-blocked-transition-corruption-and-regionalism-tunisia.

[56] Transparency International, "People and corruption: Middle East and North Africa survey 2016 — global corruption barometer". Available from www.transprency.org.

nationwide poll conducted in August 2017, 89 per cent of all respondents said that corruption had increased since the 2011 revolution.[59]

59. Corruption is not only undermining the economy, but is also at the root of inequality, weaker rule of law and the inefficient allocation of public funds to services, all of which continue to affect many Tunisians' enjoyment of rights. For example, in August 2017, 17 per cent of all respondents said in a survey that they had personally experienced corruption in hospitals, 13 per cent with traffic police and 8 per cent when accessing social services.[60] Furthermore, many respondents claimed to have personally experienced corruption at public schools, in courts or when dealing with municipalities and regional public administrations.[61]

60. Corruption has not only resulted in a misallocation of public funds, it has also contributed to the accumulation of public debt through reduced tax revenues. Corruption thus significantly shrinks investments in public services that are essential for the realization of economic, social and cultural rights. Furthermore, corruption affects the poor more than the wealthy and middle-income segments of society, as persons living in poverty often have insufficient means to afford bribes to receive the services they require, nor the resources to purchase expensive private schooling, health care or power generation as an alternative to public services that have deteriorated in quality.

61. In addition to corruption, tax evasion and transfer mispricing contribute significantly to illicit financial flows in Tunisia. Academic research has estimated that the total illicit capital flight from Tunisia reached $38.9 billion over the 1960–2010 period, $33.9 billion of which was during the rule of Zine el-Abidine Ben Ali.[62] According to Global Financial Integrity, illicit financial outflows from Tunisia amount to nearly $2 billion per annum.[63]

A. Asset recovery at home and abroad

62. There is a widespread recognition among the Government and the public that corruption, illicit financial outflows and the misappropriation of public funds must be addressed. On 15 January 2011, the provisional Government established the Commission of Inquiry into Misappropriation and Corruption. On 14 March 2011, the Government created, by Decree Law No. 2011-13, a Confiscation Commission, freezing the assets of 114 people belonging to the family and inner circle of the former ruler. The Confiscation Commission seized 550 properties, 48 boats and yachts, 40 stock portfolios, 367 bank accounts and 400 enterprises, with an estimated value of $13 billion. The value of the confiscated assets has been estimated at 25 per cent of the 2011 GDP of Tunisia.[64]

63. More challenging has been the freezing and return of stolen assets that had been deposited abroad. While there are no reliable figures, it has been estimated that up to $42 billion of assets have been misappropriated and siphoned off abroad by the Ben Ali clan.[65] Tunisian authorities have focused their efforts on promising cases. Despite all efforts, to date only a few stolen assets have been repatriated, mainly from Lebanon and Switzerland.

[59] International Republican Institute, "Public opinion survey of Tunisians", August 2017, p. 45, available at www.iri.org/sites/default/files/2017-9-26_tunisia_poll_presentation.pdf.

[60] Ibid., p. 47.

[61] Ibid. About one out of 12 people interviewed claimed to have personally experienced corruption with these institutions.

[62] Léonce Ndikumana and James K. Boyce, "Capital flight from North African countries", Political Economy Research Institute, University of Massachusetts, Amherst, October 2012, available at www.peri.umass.edu/publication/item/486-capital-flight-from-north-african-countries.

[63] Sami Dabbegh, "Illicit financial flows, corruption, and sustainable economic development in Tunisia", 5 September 2016, available at www.gfintegrity.org/illicit-financial-flows-corruption-sustainable-economic-development-tunisia.

[64] Transparency International, *Lost Billions: Recovering Public Money in Egypt, Libya, Tunisia and Yemen*, available at www.transparency.org/whatwedo/publication/lost_billions_recovering_public_money_in_egypt_liby a_tunisia_and_yemen.

[65] Ibid., p. 7.

In 2013, Tunisian authorities received $28.8 million back that had been held in a Lebanese bank account by the former first lady.[56] On the basis of mutual legal assistance requests, Switzerland returned approximately $256,000 and $3.9 million in May 2016 and May 2017 respectively.[57] A significant volume of stolen assets is still frozen in Switzerland in the hope that these funds can be returned to Tunisia after legal proceedings have been completed.

64. The Tunisian authorities have also submitted mutual legal assistance requests to other jurisdictions to ensure the freezing and return of stolen assets. The Independent Expert calls upon all countries concerned to cooperate fully with the Tunisian authorities and to adhere to their legal obligations under articles 51–58 of the United Nations Convention against Corruption to ensure a timely return of those assets.

B. Institutional capacity to fight illicit financial flows and corruption

65. In recent years, several new laws have been put in place to prevent corruption and to enhance public transparency. The Independent Expert welcomes the fact that legislation was adopted in February 2017 by the Tunisian Parliament to protect witnesses and whistle-blowers. However, the adoption of a law that would require public officials to make comprehensive asset declarations and to prevent illicit enrichment and conflict of interest was still outstanding at the time of preparation of the present report. While the Constitution requires that senior public officials and parliamentarians declare all their assets when they take office, a recent report pointed out that only 26 of 217 parliamentarians and none of the serving ministers had made a public disclosure of all their assets.[58] The Independent Expert hopes that this lack of public transparency will be addressed soon.

66. The national anti-corruption authority (INLUCC), established in 2011, can conduct inquiries, but cannot prosecute cases related to corruption, fraud, money laundering or misuse of public funds. However, it can hand over cases to the public prosecutor's office. INLUCC continues to suffer from a lack of adequate financial and human resources to fulfil its mandate, affecting its ability to respond to complaints brought to its attention. In 2014 and 2015, INLUCC was only able to process 400 complaints out of 9,000 cases brought to its attention.[59] Although efforts have been made to strengthen its capacity, the number of complaints received by the authority pose a challenge, as they continue to outstretch its capacity. In 2016, for example, INLUCC received a record 9,027 complaints, 2,198 of which were considered to fall within its mandate. According to its 2016 annual report, 1,729 of all complaints received related to corruption. Owing to capacity constraints, the authority managed to hand over only 94 of those complaints for prosecution in 2016. Forty-seven files were transferred to the Truth and Dignity Commission, which investigates past human rights violations and corruption. A large proportion of complaints concern State-owned enterprises, such as the public electricity and gas provider (STEG) and the national water company (SONEDE), whose services directly affect rights holders.[60]

C. Establishing accountability and curbing impunity

67. After the revolution, more than 30 members of the Ben Ali and Trabelsi families were arrested, and the former ruler was sentenced in absentia in June 2011 to 35 years of imprisonment and a fine of $65 million. Since 2011, according to some estimates, between

[56] Stolen Asset Recovery Initiative, "The start of more to come", 12 April 2013, available at https://star.worldbank.org/star/news/tunisia%e2%80%99s-cash-back.

[57] Federal Department of Foreign Affairs (Switzerland), "Switzerland returns EUR 3.5 million to Tunisia in stolen assets recovery process", available at https://www.admin.ch/gov/en/start/documentation/media-releases/msg-id-66859.html.

[58] See Yerkes and Muasher, "Tunisia's corruption contagion", p. 29.

[59] Ibid., p. 21.

[60] "L'INLUCC croule sous les plaintes pour corruption", *Economiste Maghrébin*, 23 November 2017, available at www.leconomistemaghrebin.com/2017/11/23/corruption-linlucc-petition-2016/.

7,000 and 9,000 civil servants have been prosecuted and 600 imprisoned, mostly for corruption-related offences.[71]

68. Nevertheless, efforts to bring to justice persons suspected to have been responsible for corruption and financial crimes are still constrained by limited capacities to conduct specialized complex investigations and to prosecute them. For example, the Financial Judicial Unit (pôle judiciaire financier) that was created in late 2012 as a specialized unit to conduct criminal investigations and prepare the prosecution of persons responsible for corruption and money laundering had, in May 2016, not yet received the resources to operate efficiently.[72] At that time, only 10 investigating judges and five deputies to the Public Prosecutor were handling more than 154 money laundering cases referred to them by the Public Prosecutor and the Chief Justice of the Court of Tunis. Between 2012 and May 2016, only 22 money laundering cases had been finalized by the investigating judges, 14 had been sent to the Indictments Chamber of the appeal court, and eight had resulted in the dismissal of charges. Only one case had resulted in a final judgment.[73] The Independent Expert learned that in November 2016 the legal basis for the work of the Financial Judicial Unit had been strengthened by an organic law, clarifying its competencies.

69. In May 2017 the Government declared a "war on corruption", which started with the arrest of 15 high-profile individuals, the freezing of their bank accounts and the confiscation of their property. The arrests were carried out under Tunisia's emergency law. While welcoming the investigation and prosecution of persons suspected of corruption, the Independent Expert is concerned about reports received that seven of the suspects detained were allegedly held in incommunicado detention without access to lawyers and without their families being informed about their whereabouts. In addition, the Independent Expert is worried about information received that the civilians concerned were allegedly tried before military courts, violating the due process guarantees in article 14 of the International Covenant on Civil and Political Rights, and raising serious problems as far as the equitable, impartial and independent administration of justice is concerned.[74] He would like to reiterate the importance of the fight against corruption strictly adhering to international standards on due process and respecting fully all international human rights norms.[75]

D. Truth and Dignity Commission

70. The Truth and Dignity Commission provides a voice to victims of past human rights violations. Its mandate also covers the investigation of financial corruption and the misappropriation of public funds between July 1955 and December 2013. The law establishing the Commission also provides for the creation of specialized judicial chambers that can be requested to adjudicate cases referred by the Commission, which are related to election fraud, financial corruption and misuse of public funds.[76]

71. The Commission can make proposals for institutional reform, in order to dismantle and rectify the system of corruption, oppression and tyranny. This includes proposals to revise legislation, the vetting of State institutions and utilities where responsibility for corruption and violations has been proven, and practical suggestions to reform institutions that participated in corruption and violations.[77]

72. According to article 45 of the law that established the Commission, a technical committee for arbitration and conciliation shall be established which shall also consider

[71] "Tunisia: transitional justice and the fight against corruption", International Crisis Group, 3 May 2016.
[72] Middle East and North Africa Financial Action Task Force, "Anti-money laundering and counter-terrorist financing measures: Tunisia — mutual evaluation report", May 2016.
[73] Ibid., p. 6.
[74] Human Rights Watch, "Tunisia: secret detentions mar anti-corruption effort", 9 June 2017 and Human Rights Committee, General Comment, No. 32 on the right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, para. 22.
[75] See A/HRC/28/60, paras. 40–41.
[76] Organic Law No. 2013-53 of 24 December 2013 establishing and organizing transitional justice, art. 8.
[77] Ibid., arts. 14 and 43.

requests for reconciliation related to cases of financial corruption. The person who submits a request for reconciliation and arbitration should acknowledge his guilt in writing and offer a clear apology, as a condition for the request being accepted. If the request is related to financial corruption, it should also include a description of events that led to the unlawful benefits.[78] Since its inception, the Commission has received 2,700 requests for arbitration in financial cases, which include 685 at the request of the Government and 16 by those responsible for financial violations, with the rest coming from individual victims.[79]

E. Organic law on reconciliation in the administrative field

73. On 13 September 2017, the Tunisian Parliament adopted an "organic law on reconciliation in the administrative field", which grants amnesty to public officials, including members of State-owned companies, who have violated regulations or caused damage to the public administration, and have provided a third party with an unjustified advantage. The amnesty law applies to acts that were committed between July 1955 and January 2011. Corruption and the misappropriation of public funds were excluded from the scope of the law. The law provides that persons who failed to disclose in their amnesty application that they personally gained from their act can still be prosecuted.[80] As amnesty is granted in a non-public procedure, it will, however, be difficult to assess whether applicants have disclosed the full truth.

74. The scope of the controversial amnesty law, proposed in 2015, initially covered the private sector too. The Independent Expert shares the concerns of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence that the law undermines the establishment of truth and may promote impunity.[81] In a similar vein, the European Commission for Democracy through Law (the Venice Commission) said in an interim opinion that the organic law on reconciliation did not offer sufficient guarantees that the mechanism to grant amnesty would be independent, that the truth would be established and that findings would be made public. In its view, the law would create a twin-track system of transitional justice, which would be incompatible with article 148 (9) of the Tunisian Constitution.[82]

75. The Independent Expert expressed similar concerns during his visit, and notes that the final law adopted by the Tunisian Parliament has unfortunately not fully addressed them.[83] He considers the organic law on reconciliation in the administrative field as a backward step in the fight against corruption and the promotion of accountability and is worried that the law could undermine efforts of the Truth and Dignity Commission.

F. Accountability in the banking sector

76. The Independent Expert would like to underline the importance of establishing accountability in the banking sector. International and national banks operating in Tunisia and abroad failed to exercise adequate due diligence when dealing with funds of politically exposed persons. Without their facilitating role, it would have been difficult for the inner circle of the Ben Ali regime to misappropriate public funds and hide them in foreign jurisdictions on a massive scale. There appear to have been, to date, no publicly known

[78] Ibid., art. 46.

[79] Amna Guellali, "The law that could be the final blow to Tunisia's transition", 23 May 2017, available at www.hrw.org/news/2017/05/23/law-could-be-final-blow-tunisias-transition.

[80] Organic Law No. 2017-62 of 24 October 2017, arts. 2, 7 and 8.

[81] Analysis of the "Projet de loi organique relative aux procedures spectales concernant la reconciliation dans les domaines economique et financier", available (in French) at www.ohchr.org/Documents/Issues/TruthOL_TUN_01.07.16_12.07.2016.docx.

[82] Council of Europe, European Commission for Democracy through Law, interim opinion on the institutional aspects of the draft law on special procedures concerning reconciliation in the economic and financial fields, opinion No. 818/2015, 27 October 2015, CDL-AD(2015)032, paras. 55–57.

[83] See also the International Centre for Transitional Justice's comments on draft organic bill No. 49/2015 pertaining to reconciliation in the administrative field, 14 September 2017.

sanctions against financial institutions, nor investigations against individuals who assisted the former regime in financial transactions related to past corruption and misappropriation of public funds.

77. The role and responsibility of foreign lenders and donors that financially assisted the Ben Ali regime for many years should also be critically examined in the context of transitional justice.[55] In this context, the Independent Expert would like to support proposals that have been tabled in Parliament to undertake a public debt audit. He also would like to encourage the Truth and Dignity Commission to look into this dimension.

VI. Conclusions and recommendations

78. **The Independent Expert recalls that the Arab Spring was sparked by young people of Sidi Bouzid in Tunisia. In fact, unemployment, the perception of corruption at higher levels of the State, and social and regional inequality ignited the anger as much as the lack of civil and political rights. Human rights violations and non-inclusive social development triggered the Tunisian transition to democracy.**

79. **This transition to democracy stands out in the region. The revolution of 2011 has resulted in significant improvements in civil and political rights. In 2014, a new Constitution enshrining international human rights standards was adopted and general elections were held. However, those gains should not be undermined by uneven progress in the field of economic, social and cultural rights.**

80. **There is a general consensus that the efficiency and responsiveness of the public administration and services for rights holders should be improved, and that public finances should be consolidated. Yet, social consensus is necessary to ensure national ownership for the implementation of economic reforms. This includes reinforcing parliamentary and civil society participation and consultation in the design and approval of macroeconomic reform packages before lending agreements are concluded.**

81. **Progress in the field of civil and political rights may become fragile if Tunisia does not ensure tangible improvements in the social and economic sphere, including when necessary through international cooperation and assistance.**

82. **Human rights, social justice, and accountability for economic crimes should not be forgotten when setting an enabling environment for productive domestic and foreign investment. Economic and social rights should therefore be the top priority of international financial institutions, bilateral lenders and Tunisian authorities. Guaranteeing these rights is the best "investment" and will play a crucial role in preventing violent extremism and political instability.**

83. **The Independent Expert expresses his concern about the recent incidents and tension in Tunisia. He calls upon all individuals to exercise their right to freedom of association and assembly in a peaceful manner and urges law enforcement officials to fully adhere to all human rights standards, including international standards regulating the use of force and the management of public demonstrations in a democratic society. Furthermore, he calls upon international financial institutions and the Government of Tunisia to review the most recent measures and ensure that — if strictly unavoidable — any adjustment measures are fairly shared, and not unjustly paid for only by the poor and lower-income segments of society.**

84. **In addition, the Independent Expert requests that urgent measures be taken to curb the rapid increase in the cost of living, which is particularly affecting poor and unemployed persons. He is worried that the latest adjustment measures may not only undermine economic, social, civil and political rights, but also economic growth, peace and stability in Tunisia.**

[55] See A/HRC/28/59.

85. **The Independent Expert would like to make the following recommendations, to the Government of Tunisia, to international financial institutions and to States supporting its economic reform programme:**

(a) **Carry out a human rights impact assessment before implementing major economic reforms, as required by the guiding principles on foreign debt and human rights, following the recommendations made by the Independent Expert for carrying out such assessments.**[85]

(b) **Undertake a debt sustainability analysis based on a comprehensive understanding of debt sustainability, incorporating human rights, social and environmental dimensions.**[86]

(c) **Ensure that public debt does not create economic, social or political vulnerabilities, but contributes to inclusive social growth and development.**

(d) **Design and implement economic reforms on the basis of a realistic timetable, and prioritize the creation of jobs for women, youth and persons with disabilities, in particular in disadvantaged regions.**

(e) **Reallocate the financial and human resources within the civil service to disadvantaged regions, and refrain from freezing recruitment across the board and from laying off people employed in the public sector.**

(f) **Ensure greater social fairness in taxation with a view to reducing inequality, including by increasing tax revenues from small, medium-sized and large-scale businesses and liberal professionals and by adopting measures to combat tax avoidance and evasion.**

(g) **Ensure that adequate measures are taken to mitigate the impact from reducing food or energy subsidies on low-income households, so that the number of individuals living below the national poverty line will actually be reduced by such reforms and adverse effects on the rights to food and adequate housing can be excluded.**

(h) **Establish a social insurance system against unemployment and develop a national strategy for combating poverty based on disaggregated data.**

(i) **Ensure the financial sustainability of the pension and social security funds and close gaps in the social security net of Tunisia with a view to providing universal coverage against risks in line with the ILO Social Protection Floors Recommendation, 2012 (No. 202).**

(j) **Ensure that planned pension reforms are based on the principle of intergenerational fairness and that minimum pension and social security benefits are of such levels that they move rights holders at least out of extreme poverty.**

(k) **Increase public resources for the public health sector with a view to restoring and improving the quality, accessibility and affordability of public health services, including free access to services and medicines for all persons without sufficient means in conformity with the Constitution and international human rights law.**

(l) **Ensure the meaningful public participation of civil society — including trade union, employer, human rights, women's rights, children's rights, transparency and anti-corruption organizations — in the design, implementation, assessment and evaluation of economic reform policies, with a view to fostering social dialogue and national ownership.**

86. **The Independent Expert recommends that the Government of Tunisia:**

[85] See A/HRC/20/23 and A/HRC/37/54.

[86] See A/71/305.

(a) Strengthen the National Anti-Corruption Authority and the Financial Judicial Unit (pôle judiciaire financier), which are in charge of prosecuting money laundering, corruption and financial crimes, with more staff and budgetary resources;

(b) Redouble its efforts to combat corruption and ensure accountability and transparency in the management of public funds;

(c) Ensure that the fight against corruption fully respects due process guarantees of international human rights law. Suspects who are allegedly responsible for corruption must be treated in conformity with international human rights standards at all times and should only be tried by competent civilian courts;

(d) Continue its efforts to freeze, confiscate and recover stolen assets at home and abroad;

(e) Ensure banking sector responsibility for past economic crimes and address the issue of financial complicity in the context of transitional justice;

(f) Foster the establishment of the Constitutional Court and ensure that its staff are adequately trained to protect all constitutional rights, including economic, social and cultural rights;

(g) Ensure that the Commission for Human Rights and Fundamental Freedoms is fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and that its mandate covers all human rights, including economic, social and cultural rights;

(h) Establish independent and effective complaint mechanisms for persons encountering difficulties with public services or who are facing challenges in accessing health insurance, social assistance, social security or other public benefits;

(i) Consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which provides rights holders with the right to make individual complaints after the exhaustion of domestic remedies.

87. **The Independent Expert encourages other States and Tunisia's lenders to:**

(a) Provide additional debt relief to Tunisia in order to reduce public debt service and boost the national economy.

(b) Give priority in their development cooperation and lending to the realization of economic, social and cultural rights in Tunisia and to the attainment of the 2030 Agenda for Sustainable Development, in collaboration with the Tunisian authorities.

(c) Continue providing support to the constitutional institutions of Tunisia, its Truth and Dignity Commission and its national human rights and anti-corruption bodies.

(d) Cooperate fully with Tunisia with a view to ensuring a timely, full and transparent return of stolen assets, in conformity with their legal obligations under the United Nations Convention against Corruption.